

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 10-0443
Jimmy C. Davis,)	
)	
Petitioner)	Decision and Order

1. The hearing by telephone was held on December 10, 2010. Mr. Jimmy C. Davis, also known as Jimmy Carroll Davis, the Petitioner (“Petitioner Davis”), participated and was represented by Anthony Burns, Esq. Again, I thank Mr. Burns for his excellent representation of Petitioner Davis.

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and was represented by Mary E. Kimball and Marsha Moore. The address for USDA Rural Development for this case is

Mary E. Kimball, Branch Accountant
USDA / RD New Program Initiatives Branch
Bldg 105 E, FC-22, Post D-2
4300 Goodfellow Blvd
St Louis MO 63120-1703

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Summary of the Facts Presented

3. Petitioner Davis owes to USDA Rural Development a balance of **\$11,197.01** in repayment of a loan that he borrowed in 1987. The loan was from the United States Department of Agriculture Farmers Home Administration, now known as USDA Rural Development. Petitioner Davis borrowed to buy a home in Kentucky, and the **\$11,197.01** balance is now unsecured (“the debt”). *See* USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed November 18, 2010), which are admitted into evidence, together with the testimony of Mary Kimball. [This balance will change: (a) the balance may have been reduced by the time I sign this Decision, because garnishment is

ongoing; and (b) I am ordering the amounts collected through garnishment of Petitioner Davis's pay to be returned to Petitioner Davis, which will increase the balance.]

4. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$11,197.01** in would increase the current balance by \$3,135.16, to \$14,332.17. *See* USDA Rural Development Exhibits, esp. RX-7, plus Ms. Kimball's testimony.

5. The amount borrowed from USDA Rural Development was \$38,100.00 in 1987. By the time of the foreclosure sale in 2002, that debt had grown to \$46,563.18. From the sale of the home, \$29,835.51 was applied to the debt, leaving a balance of \$16,727.67 still owed. Collections since then reduced the balance to **\$11,197.01**, as of November 12, 2010. RX-6.

6. Petitioner Davis's Narrative, Witness & Exhibit List, and Petitioner Davis's Consumer Debtor Financial Statement with pay stub, and Conservatorship documentation (filed November 26, 2010), are admitted into evidence, together with the testimony of Petitioner Davis, and his Hearing Request documents and statements. Petitioner Davis proved that his gross pay is about \$1,715.63 per month; and that his disposable pay is about \$1,366.80 per month. Petitioner Davis's reasonable and necessary living expenses, about \$1,563.41 per month, are more than his disposable pay. And, he owes past due medical bills.

7. Petitioner Davis's disposable pay does not support garnishment, which would create hardship (and has created hardship). 31 C.F.R. § 285.11.

8. Petitioner Davis is responsible and willing and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

9. NO garnishment is authorized. *See* paragraphs 6 & 7. I encourage **Petitioner Davis and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Davis, this will require **you** to telephone the collection agency after you receive this Decision. Petitioner Davis, you may request that your obligation to repay be canceled, based on your **inability to pay**; that you be given consideration for your disposable pay being less than your reasonable and necessary living expenses, particularly since you provide for your disabled adult daughter, age 33, of whom you are conservator, who receives Supplemental Security Income (SSI) and lives with you. Alternatively, you may ask that the debt be apportioned separately to you and your former wife the co-borrower, and that you be permitted to compromise the debt for an amount you are able to pay, to settle the claim for less. The toll-free number for you to call is **1-888-826-3127**.

Findings, Analysis and Conclusions

10. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Davis and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
11. Petitioner Davis owes the debt described in paragraphs 3, 4 and 5.
12. **NO garnishment is authorized**, because garnishment would create hardship (and has created hardship), especially considering the responsibilities Petitioner Davis carries regarding his disabled adult daughter. 31 C.F.R. § 285.11.
13. Further, Petitioner Davis **shall be repaid the amounts already garnished** from his pay. [Garnishment is ongoing because Petitioner Davis's hearing request was late; it was late because he did not receive the notice sent to a wrong address, and his employer's notification was the first he had that his pay was being garnished.]
14. This Decision does not prevent repayment of the debt through *offset* of Petitioner Davis's **income tax refunds** or other **Federal monies** payable to the order of Mr. Davis.

Order

15. Until the debt is repaid, Petitioner Davis shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in his mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).
16. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment and **shall repay the amounts already garnished** from his pay.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 17th day of December 2010

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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